IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 969 OF 2006

Shivanna Tipanna ... Petitioner

V/s

Gajanan Keshav Pendharkar & ors. ... Respondents

Mr. C.J. Sawant with C.H. Parsanani for the petitioner.

Mr. Y.S. Jahagirdar with N.D. Harabalkar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 28TH FEBRUARY, 2006

P.C.:

1. The petitioner who has suffered a decree for eviction for causing nuisance and annoyance to the landlord and neighbouring occupier at the hands of the Courts below has preferred this petition under Art. 227 of the Constitution of India.

2. I have heard the learned counsel for the petitioner as well as respondents. Perused the record.

3. The respondent plaintiffs filed the suit for eviction of the petitioner tenant from the suit premises

on various grounds including the grounds of annoyance and nuisance caused by the petitioner to the landlord respondents.

The suit premises consisted of Shop No.1 forming part of the row of four shops on the front side of the suit property facing the main road, occupied by the landlord respondents bearing City Survey No. 2/686 including the building constructed thereon, namely, Pushpam Building situated at Parel, Mumbai - 400 012. It was alleged by the plaintiffs that the petitioner defendant had illegaly installed a door by making opening on the south-west side of the suit property for which complaint was made to the Police. It was alleged that the defendant was source of nuisance and annoyance to the plaintiffs by encroaching upon the suit property by entering the compound of the suit premises and thereby using the same for the purpose of storing the bamboos, drying clothes, weaving baskets, for sleeping, playing loud music and the children of defendant and his family members using the same for answering nature’s call. The plaintiffs have their office premises in the same compound behind the suit premises where other visitors, business associates visit. Hence, on this and other grounds, the suit came to be filed.

4. The defendant contested the suit denying the allegations made against him and sought dismissal of the suit.

5. The learned Trial Judge settled the issues and on the basis of available evidence on record, came to the conclusion that the plaintiffs had proved that defendant has caused nuisance and annoyance to the plaintiffs by trespassing upon the plaintiffs' premises and, therefore, defendant was held liable to be evicted by virtue of Sec. 13 (1)(c) of the Bombay Rent Act.

6. The appeal was carried to the lower appellate Court, who, after hearing both parties came to the conclusion that the finding recorded by the Trial Court on the particular issue was legal and proper and dismissed the appeal. Hence the present petition.

7. At the outset, it may be noted that evidently both the Courts below have recorded the concurrent findings of facts of acts of tenant causing nuisance and annoyance to the landlord and passing of eviction decree on the said ground and, therefore, the pure question of fact and finding of fact, in my considered view, cannot

be exercised in writ jurisdiction as there would be no occasion for this Court to reappreciate the evidence and hence on that count itself the matter deserves to be dismissed.

8. So far as merits are concerned, it is to be noted that the evidence has shown that the respondent plaintiffs are carrying on business in the name and style of Vicco Laboratories and are exporters of Vicco Vajradanti Tooth Powder, Tooth Paste and Vicco Turmeric Ayurvedic Cream. The office of the plaintiffs is located in the compound at the back side of the suit premises wherein the defendant has high-handedly made illegal opening by putting a door. The illegal encroachment by the defendant and his family members into the compound of the plaintiffs' property and the continuous nuisance caused by the defendant by using the open space in front of the plaintiffs' office, is a matter of shame and disgrace for plaintiffs as plaintiffs feel embarassed and uneasy when their business clients, including foreigners, visit their office and are forced to observe the obnoxious activities carried on by the defendant and his family members. It is further to be noted that these aspects which are revealed from the record are denied by the

defendant, there is ample evidence on record to hold that the plaintiffs' evidence is overwhelming in nature in support of the correct position as noted above.

9. It may further be noted that the annoyance for which an action would lie under Sec. 13 (1)(c) of the Bombay Rent Act is incapable of any legal definition. Nuisance ordinarily means that which annoys or hurts or that which is offensive. It includes any act, omission or conduct which causes or is likely to cause inconvenience, hurt, damage or which may interfere with the enjoyment of the life or property. Anything done which unwarrantly affects the rights of others, endangers life, or health gives offence to the senses, violates the law or decency or obstructs the comfortable and reasonable use of the property amounts to nuisance. The question whether a particular act, omission or thing is nuisance or annoyance actionable in a law depends on surrounding circumstances. In order to attract the ground of eviction under Sec. 13(1)(c) invariable it needs to be satisfied that the alleged nuisance of the gross and unusual character, frequent and persistent and that would not be possible for the affected person or persons to lead normal life and it is such that one cannot ordinarily expect in household.

10. Therefore, if we apply this criteria to the present set of circumstances revealed from the record that there need not be any doubt whatsoever that the concurrent findings recorded by both the Courts below are just, legal and proper and, therefore, I hold that no interference is required to be made in the order passed by both the Courts below and hence the petition is devoid of merits.

11. In the result, the petition stands dismissed with no order as to costs.

12. At this stage, the learned counsel for the petitioner submitted that some time should be given to the petitioner to vacate the suit premises.

In view of the facts and circumstances, the decree shall not be executed for a period of 12 weeks from the date of this order on following conditions:

(i) That the petitioner shall furnish undertaking to this effect.

(ii) The undertaking shall be furnished by all

the adult members of the family of the petitioner.

(iii) The petitioner shall not create any third party interest in the property during the course of the period of undertaking and;

(iv) The petitioner shall continue to pay the rent during the period of his occupancy.

The undertaking to be furnished on or before 5.5.2006.

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